83 - 1682

Docket No. ———

IN THE

Supreme Court of the United States

October, 1983 Term

In Re: Martin Steel Corporation and Lloyd O. Shawber

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Does the United States Court of Appeals for the Eighth Circuit's erroneous reading of 28 U.S.C. § 1447(c) and (d), and *Thermtron Products, Inc. v. Hermansdorfer,* 423 U.S. 336 (1976), in its orders of January 30, and February 2, 1984 violate the Congressional intent of § 1447 as explained in *Thermtron?*

PARTIES

Petitioners:

Martin Steel Corporation,
Lloyd O. Shawber.

Respondents:

Owatonna Elevator Company,
Chicago-Eastern Corporation,
Mid-State Bolt and Nut Company, Inc.
Industrial Fasteners, Inc.

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REPORT REFERENCES

The United States Court of Appeals for the Eighth Circuit issued unpublished orders in *In Re: Martin Steel Corporation and Lloyd O. Shawber,* No. 83-2668, and *In Re: Industrial Fasteners, Inc.,* No. 83-2706, dated January 30, and February 2, 1984.

STATEMENT OF GROUNDS

Review is sought pursuant to 28 U.S.C. § 1254(1) of Orders of the United States Court of Appeals for the Eighth Circuit dated January 30, and February 2, 1984, denying review on jurisdictional grounds of an order of the United States District Court, District of Minnesota, dated November 18, 1983.

STATUTES

28 U.S.C. § 1447. Procedure after removal generally

. . . .

(c) If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

(As amended May 24, 1949, c. 139, § 84, 63 Stat. 102; July 2, 1964, Pub.L. 88-352, Title IX, § 901, 78 Stat. 266.)

STATEMENT OF THE CASE

On August 21, 1981, Respondent Owatonna Elevator Company[1] sued diverse and non-diverse defendants, including Petitioner Martin Steel Corporation,[2] in Steele County District Court, Third Judicial District, State of Minnesota. On January 3, 1983, plaintiff interposed an Amended Complaint which named additional diverse and non-diverse defendants, including Petitioner Lloyd Shawber.[3] After a hear-

[1]Owatonna Elevator Company is a Minnesota corporation with its principal place of business in Owatonna, Minnesota.

[2]Martin Steel Corporation is an Ohio corporation with its principal place of business in Mansfield, Ohio. It is not a subsidiary nor does it hold any subsidiaries.

[3]Lloyd Shawber is a resident of Mansfield, Ohio.

ing on October 12, 1983, the Steele County District Court entered orders on October 21, and October 26, 1983, dismissing with prejudice all non-diverse defendants.

On October 17, 1983, the diverse defendants, including Martin Steel Corporation and Lloyd Shawber, petitioned for removal to the United States District Court, District of Minnesota. Upon learning that the orders for dismissal were executed on October 21 and October 26, 1983, rather than on October 12, 1983, the date of the dismissal hearing, the diverse defendants amended their petition for removal and refiled it on November 15, 1983.[4]

On November 18, 1983, the United States District Court remanded the action to the state court. The remand order stated:

> A review of the file in this case indicates that it was initiated in Minnesota State District Court at Austin in 1981. The State District Judge, the Hon. William J. Nierengarten, has been deeply involved in the pretrial proceedings. He has supervised discovery, issued a number of orders, severally reprimanded counsel for their conduct, established a discovery termination date and set a trial date which is imminent.
>
> After all this had been done, defendants filed a petition for removal. It is very doubtful if the petition for removal was filed within the required statutory period after removability was ascertained and, at all events, it would make little sense to try the case here given Judge Nierengarten's long and deep involvement. It would be unseemly and at variance with established principles of comity for the federal court to now intervene and thus abort state court jurisdiction.

[4]Both the original Petition for removal and the Amended Petition were filed within time limits prescribed by 28 U.S.C. § 1446(b).

> It is ordered that this case is remanded to the Minnesota District Court for the Third Judicial District.

On December 12, 1982, Martin Steel Corporation and Lloyd Shawber filed a petition for a Writ of Mandamus, seeking review of the November 18, 1983, order remanding the case. On January 30, 1984, the United States Court of Appeals for the Eighth Circuit issued an order denying the mandamus petition and stated:

> Martin Steel Corporation and Lloyd O. Shawber seek a writ of mandamus vacating a district court order which remanded the case of *Owatonna Elevator Company v. Martin Steel Corporation*, No. 3-83-1298, to state court. As we view the district court's order, the case was remanded because the petitioners had failed timely to remove from state to federal court, stating that "it is very doubtful that the petition for removal was filed within the required statutory period after removability was ascertained . . .
>
> We believe the district court's determination that the case had been improvidently removed is within the bounds of 28 U.S.C. § 1447(c). See *Royal v. State Farm Fire & Casualty Company*, 685 F.2d 124, 127 (5th Cir. 1982); *Robertson v. Ball*, 534 F.2d 63, 65 N. 2 (5th Cir. 1976). Hence, the remand order is not reviewable in this court. First, pursuant to 28 U.S.C. § 1447(d) removal orders are not reviewable unless the order is based on grounds wholly different from those permitted by § 1447(c). Second the section "prohibits review of all remand orders issued pursuant to § 1447 (c) whether erroneous or not and whether review is sought by appeal or by extraordinary writ. *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 343 (1976).

It is ordered that the petitions for writ of mandamus are denied.

This order was amended on February 2, 1984, to include denial of the petition by another diverse defendant, Industrial Fasteners, Inc., who had joined Martin Steel Corporation and Lloyd Shawber in petitioning for a Writ of Mandamus.

Martin Steel Corporation and Lloyd Shawber, now, petition for a Writ of Certiorari to the United States Court of Appeals for the Eighth Circuit.

ARGUMENT

The district court based its decision to remand to the state court on the grounds that "[i]t would be unseemly and at variance with established principles of comity" for the federal court to assume jurisdiction of this case.

28 U.S.C. § 1447(c) and (d), as interpreted in *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1936), establishes the basis for the return of a removed case to a state forum. Remand that does not comply with the statutory provision, as consrued by *Thermtron*, is forbidden and beyond the authority of a district court.

Subdivisions (c) and (d) of § 1447 permit a remand only when a suit has been "removed improvidently and without jurisdiction." The grounds for remand mandated by these subsections are exclusive in that a remand cannot exceed its statutory definition. An order that purports to remand on grounds that a suit was "removed improvidently and without jurisdiction" is not subject to review in a court of appeals, even if remand was clearly erroneous. But, if the remand is on grounds not provided for by § 1447, subds. (c) and (b), a limited review is available by writ of mandamus.

In the instant case, the District Court remanded on grounds wholly different from those provided for by subsections (c) and (d). Its order remanding considered procedural actions of the state court, the imminence of trial, and the principles of comity; none of these considerations are recognized by the statute as a basis for remand. The District Court intimated that removal was untimely but clearly based its decision on its perception of comity and orderly judicial administration. The Eighth Circuit read this ambiguous part of the District Court's order remanding and erroneously concluded review was barred. The off-hand comment by the district court that it was "doubtful" that the demand for removal was timely filed was clearly not the basis for the district court's action; rather, the district court was motivated solely by concerns of comity and orderliness of the judicial proceedings—grounds wholly analogous to the trial court's improper concern for its crowded docket in *Thermtron:*

> The determining factor was the District Court's heavy docket, which respondent thought would unjustly delay plaintiffs in going to trial on the merits of their action. This consideration, however, is plainly irrelevant to whether the District Court would have had jurisdiction of the case had it been filed initially in that court, to the removability of a case from the state court under § 1441, and hence to the question whether this cause was removed "improvidently and without jurisdiction" within the meaning of the statute.

Thermtron, 423 U.S. at 344. Likewise, the federal district court's concerns in this case for orderliness or comity are not among the grounds specified by Congress for remand. The Eighth Circuit's denial of review by mandamus perpe-

tuates a wrongful denial of a federal forum to diverse defendants, contrary to the Congressional intent to permit diverse defendants access to federal forums. *Powers v. Chesapeake & O. Ry.*, 169 U.S. 92 (1898).

Deprivation of a Congressionally granted right through erroneous readings of federal statutes and this Court's precedent, without sufficient findings to justify remand or denial of review, is arbitrary and unjust. The Petition for a Writ of Certiorari should be granted to assure the Petitioners, and others,[8] their Congressional right to a federal forum.

Respectfully submitted,

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[8]In this case and others, lower courts are now erroneously using perceived practical considerations to justify remand contrary to the statute. Another district court within the Eighth Circuit recently wrote:

> A court could more appropriately address the propriety of remand by considering the following set of factors:
>
> 1) The nature and gravity of the defect in removal;
>
> 2) Principles of comity and judicial economy;
>
> 3) Relative prejudice to the parties, including deference to the plaintiff's choice of forum; and
>
> 4) Actions taken by the party seeking remand that imply it has affirmatively sought the federal court's intervention.

Midwestern Distribution v. Paris Motor Freight Lines, 563 F.Supp. 489, 493 (E.D. Ark. 1983). (Considering whether a right to remand had been waived.)

APPENDIX INDEX

APPENDIX

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION

Owatonna Elevator Co., a Minnesota corporation,
Plaintiff,

vs.

Martin Steel Corporation, Chicago-Eastern Corporation, Mid-State Bolt & Nut Company, Inc., Industrial Fasteners, Inc., and Lloyd Shawber,
Defendants.

ORDER

Civ. 3-83-1298

A review of the file in this case indicates that it was initiated in Minnesota State District Court at Austin in 1981. The State District Judge, the Honorable William J. Nierengarten, has been deeply involved in the pretrial proceedings. He has supervised discovery, issued a number of orders, severely reprimanded counsel for their conduct, established a discovery termination date and set a trial date which is imminent.

After all this had been done, defendants filed a petition for removal. It is very doubtful if the petition for removal was filed within the required statutory period after removability was ascertained and, at all events, it would make little sense to try the case here given Judge Nierengarten's

long and deep involvement. It would be unseemly and at variance with established principles of comity for the Federal Court to now intervene and thus abort State Court jurisdiction.

IT IS ORDERED THAT this case is remanded to the Minnesota State District Court for the Third Judicial District.

Dated: November 18, 1983.

EDWARD J. DEVITT
United States District Judge

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-2668

In Re: Martin Steel Corporation and Lloyd O. Shawber,
Petitioners.

No. 83-2706

In Re: Industrial Fasteners, Inc.,
Petitioner.

On Petition for Writ of Mandamus

Filed: January 30, 1984

Before HEANEY, ROSS and FAGG, Circuit Judges.

ORDER

Martin Steel Corporation and Lloyd O. Shawber seek a writ of mandamus vacating a district court order which remanded the case of *Owatonna Elevator Co. v. Martin Steel Corporation*, No. 3-83-1298, to state court. As we view the district court's order, the case was remanded because the petitioners had failed timely to remove it from state to federal court, stating that "it is very doubtful if the petition for removal was filed within the required statutory period

after removability was ascertained * * *." We believe the district court's determination that the case had been improvidently removed is within the bounds of 28 U.S.C. § 1447(c). *See Royal v. State Farm Fire and Casualty Co.*, 685 F.2d 124, 127 (5th Cir. 1982); *Robertson v. Ball*, 534 F.2d 63, 65 n.2 (5th Cir. 1976). Hence, the remand order is not reviewable in this court. First, pursuant to 28 U.S.C. § 1447(d) removal orders are not reviewable unless the order is based on grounds wholly different from those permitted by section 1447(c). Second, the section "prohibits review of all remand orders issued pursuant to § 1447(c) whether erroneous or not and whether review is sought by appeal or by extraordinary writ." *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 343 (1976).

IT IS ORDERED that the petitions for writ of mandamus are denied.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 83-2668

In Re: Martin Steel Corp. and Lloyd O. Shawber,
Petitioners.

No. 83-2706

In Re: Industrial Fasteners, Inc.,
Petitioner.

On Petition for Writ of Mandamus

Filed: February 2, 1984

Before HEANEY, ROSS and FAGG, Circuit Judges.

AMENDED ORDER

Martin Steel Corporation and Lloyd O. Shawber and Industrial Fasteners, Inc. seek writs of mandamus vacating a district court order which remanded the case of *Owatonna Elevator Co. v. Martin Steel Corporation*, No. 3-83-1298, to state court. As we view the district court's order, the case was remanded because the petitioners had failed timely to remove it from state to federal court, stating that

"it is very doubtful if the petition for removal was filed within the required statutory period after removability was ascertained * * *." We believe the district court's determination that the case had been improvidently removed is within the bounds of 28 U.S.C. § 1447(c). *See Royal v. State Farm Fire and Casualty Co.*, 685 F.2d 124, 127 (5th Cir. 1982); *Robertson v. Ball*, 534 F.2d 63, 65 n.2 (5th Cir. 1976). Hence, the remand order is not reviewable in this court. First, pursuant to 28 U.S.C. § 1447(d) removal orders are not reviewable unless the order is based on grounds wholly different from those permitted by section 1447(c). Second, the section "prohibits review of all remand orders issued pursuant to § 1447(c) whether erroneous or not and whether review is sought by appeal or by extraordinary writ." *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336, 343 (1976).

IT IS ORDERED that the petitions for writ of mandamus are denied.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS,
EIGHTH CIRCUIT

No. 83-1682

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

MARTIN STEEL CORPORATION AND
LLOYD O. SHAWBER,

Petitioners,

vs.

OWATONNA ELEVATOR COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the Eighth Circuit Court of Appeals abused its discretion in denying mandamus and finding that the lower court's remand order was within the bounds of 28 U.S.C. §1447(d), and hence not reviewable.

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Supreme Court of the United States

OCTOBER TERM, 1983

NO. 83-1682

MARTIN STEEL CORPORATION AND
LLOYD O. SHAWBER,

Petitioners,

vs.

OWATONNA ELEVATOR COMPANY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

RESPONDENT'S BRIEF IN OPPOSITION

The Respondent Owatonna Elevator Company[1] respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Eighth Circuit's orders denying mandamus. Those unpublished orders, in *In re Martin Steel Corporation and Lloyd O. Shawber*, No. 83-2668, and *In re Industrial Fasteners, Inc.*, No. 83-2706, dated January 30 and February 2, 1984, are set out in full in the Appendix to the Petition for Certiorari.

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[1] Owatonna Elevator Company is a Minnesota Corporation with its principal place of business in Owatonna, Minnesota. Owatonna Elevator has no subsidiaries or affiliates, nor is it owned by a parent company.

STATUTORY PROVISIONS

28 U.S.C. §1446. Procedure for removal.

. . . .

(b) The petition for removal of a civil action or proceeding shall be filed within thirty days after the receipt by the defendant, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which such action or proceeding is based, or within thirty days after the service of summons upon the defendant if such initial pleading has then been filed in court and is not required to be served on the defendant, whichever period is shorter.

If the case stated by the initial pleading is not removable, a petition for removal may be filed within thirty days after receipt by the defendant, through service or otherwise, of a copy of an amended pleading, motion, order or other paper from which it may first be ascertained that the case is one which is or has become removable.

June 25, 1948, c. 646, 62 Stat. 939; May 24, 1949, c. 139, §83, 63 Stat. 101; Sept. 29, 1965, Pub.L. 89-215, 79 Stat. 887.

28 U.S.C. §1447. Procedure after removal generally.

. . . .

(c) If at any time before final judgment it appears that the case was removed improvidently and without jurisdiction, the district court shall remand the case, and may order the payment of just costs. A certified copy of the order of remand shall be mailed by its clerk to the clerk of the State court. The State court may thereupon proceed with such case.

(d) An order remanding a case to the State court from which it was removed is not reviewable on appeal or otherwise, except that an order remanding a case to the State court from which it was removed pursuant to section 1443 of this title shall be reviewable by appeal or otherwise.

As amended May 24, 1949, c. 139, §84, 63 Stat. 102; July 2, 1964, Pub.L. 88-352, Title IX, §901, 78 Stat. 266.

STATEMENT OF THE CASE

On August 21, 1981, Owatonna Elevator Company, the plaintiff in the underlying action, brought suit in Steele County District Court, Third Judicial District, State of Minnesota, against Petitioner Martin Steel Corporation, as well as other diverse and non-diverse defendants. In January of 1983, plaintiff filed an Amended Complaint naming additional diverse and non-diverse defendants, including Petitioner Lloyd O. Shawber.

Owatonna Elevator reached settlement, in late August and early September, with two defendants who were Minnesota residents. On September 12, 1983, all parties were served with a motion for dismissal of these two defendants, notifying all parties of the settlement. Two days later, settlement was reached with the remaining non-diverse defendants. That same day, September 14, the attorney for these remaining non-diverse defendants notified Petitioners' attorney of this settlement on the record at deposition. Over thirty days later, on October 17, Martin Steele, Lloyd O. Shawber, and the other defendants filed a petition for removal. A second petition was filed on November 15.

On November 18, 1983, the Honorable Edward J. Devitt issued an order, *sua sponte*, remanding the action to state

court. Judge Devitt based that order on the untimeliness of the petition, as well as considerations of comity. Petitioners sought a writ of mandamus from the Eighth Circuit vacating the remand order. That writ was denied. The Eighth Circuit found that the remand order was based on the untimeliness of the removal petition, and hence the remand order was not reviewable.

Martin Steel has now filed this petition for writ of certiorari, seeking for a second time review of Judge Devitt's remand order.

REASONS WHY THE WRIT SHOULD BE DENIED

This Petition does not comport with the considerations governing review on certiorari set out in Rule 17 of this Court. The Petition raises no important question of federal law which has not been, but should be, settled by this Court. On the contrary, this Court has very clearly mapped out the bounds for review of remand orders in *Thermtron Products, Inc. v. Hermansdorfer*, 423 U.S. 336 (1976); *Volvo Corp. v. Schwarzer*, 429 U.S. 1331 (1976); and, *Gravitt v. Southwestern Bell Tel. Co.*, (per curiam), 430 U.S. 723 (1976). Furthermore, the Petitioner does not contend that the Eighth Circuit has so far departed from the accepted and usual course of judicial proceedings to call for review by this Court. Rather, Petitioner seeks certiorari on the grounds that the circuit court's denial of mandamus violated the Congressional intent of 28 U.S.C. §1447 as expressed in this Court's decision in *Thermtron*. In point of fact, the Eighth Circuit's denial of mandamus was in accord with both the letter and spirit of the *Thermtron* opinion.

In *Thermtron*, this Court held that 28 U.S.C. §1447(d) did not preclude an appellate court from issuing a writ of mandamus if a district judge has remanded a case wholly on grounds that he had no authority to consider. *Thermtron* does not provide for unfettered review of every remand order not expressly based on the statutory grounds; nor does *Thermtron* establish a right to appellate jurisdiction to compel an unambiguous statement of the grounds for remand. All *Thermtron* does is chart a narrow exception to the century-old rule of law that remand orders are not reviewable by appeal or writ.

The parameters of the *Thermtron* holding were more clearly demarcated in *Volvo*, *Gravitt*, and again in *Briscoe v. Bell*, 432 U.S. 404 (1977). In *Gravitt*, the court ruled that *Thermtron* permitted review of only those remand orders issued "on grounds wholly different from those upon which §1447(c) permits remand." *Gravitt*, 430 U.S. at 723. Similarly, the Court in *Briscoe*, referring to the decisions in *Thermtron* and *Gravitt*, stated "where the [remand] order is based on one of the enumerated grounds, review is unavailable no matter how plain the legal error in ordering the remand." *Briscoe*, 432 U.S. at 414 n.13. In *Volvo*, Justice Rehnquist, denying a motion for the stay of a remand order, rejected the applicant's argument that the district court, having specifically found jurisdiction over a few members of the plaintiff class, erroneously remanded the entire action. Justice Rehnquist stated:

> Applicant's position would mean that any allegedly erroneous application of §1447(c) would be reviewable by writ of mandamus, leaving the §1447(d) bar extant only in the case of allegedly proper applications of §1447(c), a reading too Pickwickian to be accepted, and contrary to the clear language of *Thermtron*.

Id., 429 U.S. at 1333 (footnote omitted).

The Eighth Circuit's denial of mandamus in this action follows the clear path of law mapped out in *Thermtron*, *Gravitt*, and *Volvo*. The district court order cited two grounds for the remand, the untimeliness of the petition and concerns of comity.[2] Courts uniformly consider the timeliness of the petition in determining whether a case has been improvidently removed. *See, e.g., Irving Trust Co. v. Century Export & Import*, 464 F.Supp. 1232, 1239 (S.D.N.Y. 1979). A determination that a case has been improvidently removed due to a failure to comply with the §1446(b) time limits, whether erroneous or not, cannot be reviewed by writ or appeal.

In denying mandamus, the Eighth Circuit expressly determined that the case had been remanded because it was not removed in a timely fashion, and as such the remand order was not reviewable. Contrary to Petitioner's assertions, the appellate court's denial was in complete accord with this Court's decisions. Failure to comply with the applicable time limits was sufficient grounds to justify remand in and of itself. As the circuit court noted, and as *Gravitt* held, review is permitted of only those remand orders issued "on grounds *wholly* different" from those permitted by §1447(d).

Noting the lower court's concerns with the timeliness of the removal petition, the circuit court determined the remand was based on these concerns and properly concluded the order was not reviewable. The propriety of this conclusion does not warrant review by this Court. As stated in *Kerr v. United States*, 426 U.S. 394, 403 (1976), the issuance of a writ of mandamus "is in large part a matter of discretion

[2] Even if the remand order had been based solely on concerns of comity, it would still fall within the permissible grounds for remand set out in §1447(c). Unlike the docket considerations in *Thermtron*, concerns of comity are implicit in the question of whether a court should exercise jurisdiction.

with the court to which the petition is addressed." The Eighth Circuit's denial of mandamus in this action was proper and in complete accord with this Court's decisions; the denial cannot justifiably be termed an abuse of discretion.

Petitioners contend that the Eighth Circuit's denial of remand is somehow at odds with Congressional intent as expressed in *Thermtron*. This contention is, at best, disingenuous. As this Court made clear in *Thermtron*, Congress drafted the removal and remand statutes as it did "in order to prevent delay in the trial of remanded cases by protracted litigation of jurisdictional issues." *Thermtron*, 423 U.S. at 351. Yet Petitioner's procedural circumventions and repeated attempts to force review of the unreviewable have thwarted congressional intent. For most of the last six months, this case, which was originally scheduled for trial in state court this past January, has been lost in a tangled thicket of jurisdictional issues.

In the final analysis, however, the issues raised in the Petition simply are not important enough to justify review by this Court. Any clarification needed of the *Thermtron* decision was made in *Gravitt*, *Volvo*, and *Briscoe*. Moreover, were this Court to note certiorari jurisdiction, hear the issue on its merits, and reverse the court of appeals, only the parties to this litigation would be effected. The question presented in the Petition has already been answered, and it requires no further response from this Court.

CONCLUSION

For these reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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